

STATE OF MICHIGAN
COURT OF APPEALS

GROUND DEVELOPMENT, INC.,

Plaintiff-Appellee,

v

DOYLE & LANG, L.L.C.,

Defendant-Appellant.

UNPUBLISHED
November 1, 2005

No. 255202
Macomb Circuit Court
LC No. 04-000176-CK

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Defendant appeals by leave granted an order denying its motion for a change of venue. We reverse and remand for entry of an order changing venue to Gladwin County. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant, a Gladwin County limited liability company with its principal office in Beaverton, Michigan, leased a stump grinder, mounted on a backhoe, to plaintiff. The lease included a purchase option under which ninety percent of the rental payments could be applied to the \$200,000 purchase price once all of the payments, totaling \$221,000, were made. The consequences of plaintiff's failure to pay the rent on time included repossession of the equipment without a court order.

Plaintiff provided defendant a check, dated or post-dated November 14, 2003, for a \$26,000 October payment. The check was returned for nonsufficient funds on November 17, 2003. Defendant repossessed the equipment. Plaintiff then gave defendant a certified check for the full amount that remained owing on the contract. Plaintiff contended that it was entitled to the equipment; defendant disagreed. In its complaint, plaintiff alleged breach of contract, unjust enrichment, conversion/improper repossession, and claim and delivery. Plaintiff asserts that venue is proper under MCL 600.1627 and MCL 600.1629, which deal with tort claims.

Conversion is an intentional tort. *Trail Clinic, PC v Bloch*, 114 Mich App 700, 705; 319 NW2d 638 (1982). Thus, venue should be determined under MCL 600.1629, which provides in pertinent part:

(1) Subject to subsection (2) [which makes an exception for hardship or inconvenience], in an action based on tort or another legal theory seeking

damages for personal injury, property damage, or wrongful death, all of the following apply:

(a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:

(i) The defendant resides, has a place of business, or conducts business in that county.

(ii) The corporate registered office of a defendant is located in that county.

Under subsection (a), it must first be determined in which county the original injury occurred. Although plaintiff claims that defendant wrongfully repossessed the equipment, it has not countered defendant's argument that at the time the equipment was repossessed, it had issued a bad check to pay its overdue rental payment, and that it was not until the equipment was back with defendant in Gladwin County that plaintiff tendered the contract amount and thereby became, according to plaintiff, entitled to possession of the equipment. Thus, defendant did not wrongfully repossess the equipment in Macomb County. The "conversion," if any, occurred when plaintiff made the final payment under the terms of the lease and expected to obtain ownership, and defendant refused to relinquish the equipment. This occurred in Gladwin County, where the equipment had been taken by defendant. Thus, the original tort injury occurred in Gladwin County. Given that the original injury occurred in Gladwin County and defendant's place of business is in Gladwin County, venue should have been changed to Gladwin County.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilder